IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 2017 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ASHOK CHANDRAKANT GANDHI

Versus

STATE OF GUJARAT

Appearance:

MR KB ANANDJIWALA for Petitioner

Mr S K Patel, APP for Respondent No. 1

MR AV PRAJAPATI for Respondent No. 2

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 17/08/2000

ORAL JUDGEMENT

The petitioner has filed this petition under Section 482 of the Criminal Procedure Code, 1973 to quash

and set aside Cr.Case No.3022/99 filed by the second respondent before the learned Judicial Magistrate First Class, Anand which has been registered for offence punishable under section 138 of the Negotiable Instruments Act. (for short, 'the Act'). In the above Cr.Case No.3022/99, in all six accused persons including the present petitioner are involved. The said complaint which has been placed at Annexure 'A' at page 12 to the petition shows that accused no.1 is a registered company and accused no.2 to 4 are Directors of the said Company. It has been shown that accused No.2 to 6 have information about the dealing between the parties and a contract has also been entered into and therefore, they are all liable to pay the amount due to the complainant by the accused persons. Incidently, the present petitioner has been shown as accused no.5 in the said complaint. The complainant had further knowledge that different cheques were issued between 22.3.1999 and 31.3.1999. That all those cheques were presented to the bank and all were dishonoured on 10.4.1999 with endorsement "funds insufficient". Therefore, the second respondent being the original complainant issued notice to the accused persons for demand of amounts of those cheques. The present petitioner has sent reply to the said notice stating that he had already resigned as Director of the said Company and he was no more the Director on the relevant dates mentioned in the notice and, therefore, the notice sent to him as Director of the said company is not legal, proper and it was required to be cancelled. Thereafter, a complaint was filed on 20.5.1999 and process in the aforesaid case was issued. Feeling aggrieved by the said complaint and order of issuance of process, the present petitioner being accused no.5 in the said complaint, has preferred this petition before this Court. It has been mainly contended here that the present petitioner is an innocent person and he has not committed any offence. It has been contended that by letter dated 19.3.1999, the present petitioner had resigned his position as Director of the said company and resignation was accepted on the very day and since that date, he ceased to be the Director of the Company. That the cheques in question have been issued subsequent thereto and those dates the petitioner was not the Director of the company and he was not otherwise responsible to the day-to-day affairs of the said company and, therefore, he could not be treated to be criminally liable to answer the said complaint of the present second respondent. Therefore, the complaint cannot be proceeded against this petitioner and hence the petitioner has prayed that the aforesaid complaint against the petitioner be quashed and set aside.

2. Notice was issued at the first instance and thereafter, Rule was issued on 3.5.2000. Mr S K Patel, learned APP appeared for the State and Mr A V Prajapati, learned Advocate appeared for the contesting respondent no.2.

3. I have heard the learned Advocates for the parties and have perused the papers. Learned Advocate for the petitioner has argued at length that the present petitioner was not Director on the dates on which the cheques have been issued. That the complaint shows the cheques have been issued on 22.3.99, 23.3.99, 24.4.99, 26.3.99 and 31.3.99. As per the arguments of the learned Advocate for the petitioner, the petitioner had resigned on 19.3.1999. On this point, the argument is supported by the letter of resignation at annexure 'B' at page 5 to the petition. It says that the petitioner tendered resignation as Director of the company with immediate effect. There is another letter at page 17 addressed to the petitioner saying that the resignation has been accepted with immediate effect. The resignation letter is dated 19.3.1999. By letter dated 5.5.99, the company accepted the above resignation. This shows that the relevant letter of resignation was accepted with effect from 19.3.1999. These two documents make it clear that the petitioner was not a Director of the said company on and after 19.3.1999.

4. Even the complainant has not produced anything on record to show that the petitioner was Director of the company on the relevant date. It is relevant and material to note that the petitioner has shown the accused no.2 to 4 as Directors of the said company. They are Mr Ajay M Mehta and Mr Nirav A Mehta and Ms. Hansa A Mehta. These are the three persons who are shown to be the Directors of the said Company. The present petitioner is shown as accused no.5 in the said complaint at page 12 to the petition. But the second respondent has not shown the petitioner as Director of the said company. This shows that even the second respondent knew at the time of filing the complaint that the present petitioner was not the Director of the aforesaid company at the relevant point of time.

5. An attempt was made to argue on behalf of the second respondent by Mr Prajapati, learned Advocate that the said letter has been subsequently got up and the petitioner was really a Director at the time when the complaint was filed and the cheques were issued. This is contrary to the complaint it self. The complaint itself

does not indicate that the petitioner was Director of the said company on the date of issuance of the cheques and on the date of return of the cheques. It is also not stated in the complaint that the letter of resignation dated 19.3.1999 has been subsequently got up one or fabricated one. It is also not shown that the said letter is an after-thought with a view to avoid responsibility and liability arising out of the said cheques, those allegations are not found in the complaint. It is to be noted that the petitioner had made it clear in his reply dated 30.4.1999 that he was not a Director and had resigned from the said position. Therefore, the second respondent was made to know that the petitioner has resigned as Director and by not describing the petitioner as the Director of the company. Even apart from the position as Director, there is no allegation in the complaint that the petitioner was otherwise responsible for the day-to-day affairs and management of the company. This makes it clear that the petitioner was neither a Director nor a person responsible for the day-do-day affairs and management of the company. Therefore, it is difficult to accept the version of the second respondent that the petitioner is still liable and responsible to answer the complaint of the second respondent. Learned Advocate for the second respondent has relied upon a decision of the Supreme Court in the case of in the case of State of Haryana v. Bhajan Lal, reported in AIR 1992 SC 604. There some guidelines have been enumerated in para 108 of the decision. The guidelines have been issued in order to prevent wrong being committed in the petitions of quashing of proceedings before the criminal courts. It is true that the complaints and FIRs are not required to be lightly to be quashed and set aside. There cannot be any dispute with respect to the said guidelines mentioned at para 108 of the said judgment. The question is that when a person is not shown to be the Director or otherwise, responsible for day-to-day affairs of the company and still to be held responsible in a criminal case in a criminal court when the fact is not very much in dispute and when the particular accused is not shown to be a Director otherwise responsible person in the complaint itself. It is more so, when the responsibilities of other persons have been mentioned stating that accused no. 2 to 4 were Directors of the said company. Therefore, while showing accused no. 2 to 4 as Directors of the company, the second respondent has positively omitted to mention the name of the present petitioner as Director or otherwise responsible for the affairs of the company.

6. Another decision relied on by the learned Advocate for the second respondent is in the case of Rajesh Bajaj v State of NCT of Delhi, reported in AIR 1999 SC 1216. There it has been observed that the complainant is not required to reproduce verbatim all ingredients of offence alleged in body of the complaint. Naturally, the courts are not required to be strict and rigid with respect to the averments made in the complaint. Therefore, if a particular ingredient is missing, it cannot be said that no offence at all has been committed. Here the facts are different as said above. Therefore, the aforesaid decision will not apply on the facts of the case before me.

7. One more decision relied upon by the second respondent is in the case of Medchi Chemicals & Pharma (P) Ltd. v. M/s, Biological E Ltd. & Ors, reported in 2000,Cr.L.R. (SC) 301. There it has been observed that the High Court is not required to examine the correctness at the stage of considering quashing of complaint in a petition filed under section 482 of the Cr.Procedure Code.

8. I am not going deep in the correctness of the allegations made in the complaint. I am not deciding as to whether the allegations made in the complaint are correct or not. A reading of the allegations makes it very clear that the complainant has not shown the present petitioner as Director or as a person responsible for the day-to-day affairs and management of the company. The offence is mainly said to have been committed by the company. It is not an offence committed by the accused persons in their individual capacity.

9. In view of the aforesaid position, I do not agree with the aforesaid arguments advanced by the learned Advocate for the second respondent. Even learned APP Mr S K Patel states that when the complaint itself does not show that the petitioner is a Director or otherwise responsible for the affairs of the company, then it would be difficult to support the complaint and the complainant in this petition.

10. Learned Advocate for the petitioner has relied upon a decision in the case of M Chockalingam v M/s. Sundaram Finance Service Ltd. reported in 2000 Cr.L.J. 137. There the offence was committed by the company under the provisions of Negotiable Instrument Act and the petition was filed for quashing the complaint. The cheques issued by the company after the petitioner ceased to be the Director of the said Company. No allegation in

the complaint that the petitioner was the Director or responsible to the company at the time when the offence was committed. There the complaint was held to be liable to be quashed. In the present case also it is very clear that even according to the allegations made in the complaint itself, the petitioner is not shown to be the Director or a person responsible for the affairs of the company. On the other hand, the records show that the petitioner had resigned before issue of cheques and there is no allegation on record that the resignation has been subsequently got up or fabricated one. In view of the above, on the face of record, it is apparent that the petitioner cannot be treated to to be criminally liable to answer the complaint made by the second respondent. An attempt was made to show that the intimation was sent to the Registrar of Companies laate which would indicate that the resignation was really not tendered on 19.3.1999 but was tendered subsequently. Because the intimation was sent little late, it cannot be said, for the purpose of this petition that the resignation was not tendered on 19.3.1999 or that it was not accepted on 19.3.1999. This question of fact cannot be looked into in absence of any material or any allegation, either allegation simpliciter or by way of affidavit, since no affidavit on behalf of the second respondent is filed to controvert the allegations. Suffice it to say that the petitioner is not shown to be a Director or otherwise responsible for the purpose of day-to-day affairs of the company at the time of issuing the cheques and, therefore, the complaint against the petitioner cannot proceed according to law. If it is directed to proceed against him, it would amount to abuse of process of the court and, therefore, in the interest of justice and in the fitness of things, the complaint is required to be quashed against the petitioner. The second respondent can proceed against the remaining accused persons. Therefore, this petition is allowed. The complaint being Criminal Case No.3022/99 pending before the learned Judicial Magistrate First Class, Anand is ordered to be quashed and set aside as against the present petitioner-Ashok C Gandhi. Learned Judicial Magistrate First Class, Anand is prevented from proceedings against the petitioner in the said complaint. The complaint against the remaining accused persons will proceed with according to law.

Rule is made absolute accordingly.

17.8.2000 [D P Buch, J.]
msp.